



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2018-0356]

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Boca Raton, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the Camino Real (Boca Club) Bridge across the Atlantic Intracoastal Waterway, mile 1048.2, at Boca Raton, Florida. This modification is necessary to allow for the completion of extensive rehabilitation of the bridge and fender system. This modification will allow the draw to provide single-leaf openings with a 6-hour advanced notice for a full opening.

DATES: This temporary final rule is effective from 7 a.m. on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 7 p.m. on April 30, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2018-0356 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail mail Lieutenant Samuel Rodriguez-Gonzalez, U.S. Coast Guard Sector Miami, Waterways Management Division; telephone 305-535-4307, email samuel.rodriguez-gonzalez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
FL	Florida

II. Background Information and Regulatory History

On April 27, 2018, we published a temporary deviation from the operating schedule for the Camino Real Bridge entitled, “Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Boca Raton, FL” in the Federal Register (83 FR 18415). Outreach conducted with mariners utilizing the waterway indicated no objections to the temporary deviation.

The temporary deviation time period ran from April 23, 2018 through October 9, 2018, and was effective from 7 a.m. to 7 p.m. Monday through Saturday. During the effective period, the bridge operated on single-leaf openings with a 6-hour advanced notice for a full opening. Outside of the effective period, the bridge operated per the normal bridge operating schedule.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the

Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorized an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable.

Unanticipated weather delays negatively impacted the schedule and pace of the bridge rehabilitation, and as a result additional time is required to complete the work necessary to restore the bridge to full operation. Therefore, the operating schedule of the bridge must be modified to allow for performance of all remaining repairs to the bridge and fender system in order to ensure the safety of persons and vessels in the vicinity of the bridge.

We are issuing this rule and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register for the reasons stated above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Camino Real (Boca Club) Bridge across the Atlantic Intracoastal Waterway, mile 1048.2, at Boca Raton, FL is a double-leaf bascule bridge with a vertical clearance of 10 feet at mean high water in the closed to navigation position and a horizontal clearance of 83 feet between the fender system. The existing drawbridge operating regulation is set out in 33 CFR 117.261(aa-1). Kiewit Infrastructure South Co., on behalf of the bridge owner, Palm Beach County,

requested this modification in order to effect rehabilitation of the bridge and fender system as described above.

The Atlantic Intracoastal Waterway is used by a variety of vessels including U.S. government vessels, small commercial vessels, recreational vessels and tugs and barge traffic. Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will not be able to provide a full opening for emergencies and there is no immediate alternate route for vessels to pass.

IV. Discussion of the Rule

As noted above, we received no comments on the temporary deviation published on April 27, 2018. Additionally, coordination with waterway users indicated no objection to the temporary modification of the drawbridge schedule.

This rule modifies the operating schedule governing the Camino Real (Boca Club) Bridge across the Atlantic Intracoastal Waterway, mile 1048.2, at Boca Raton, FL. The draw shall provide single-leaf openings with a 6-hour advanced notice for a full opening from 7 a.m. to 7 p.m. Monday through Saturday. During non-working hours, the bridge will operate per the normal bridge operating schedule. The rule is necessary to accommodate the completion of the rehabilitation of the bridge and fender system. The Coast Guard will inform the users of the waterway through Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that operators can arrange their transits to minimize any impact caused by the temporary rule.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: (1) the modified schedule will only be effective for twelve hours daily, Monday through Saturday; (2) vessels may continue to pass under the bridge via single-leaf openings; (3) the draw will provide a full opening so long as a requesting vessel provides notice 6-hours in advance notice; and (4) vessel traffic able to pass under the bridge in the closed position may do so at anytime.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule

will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction. A Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.261, effective from 7 a.m. on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to 7 p.m. on April 30, 2019, suspend paragraph (aa-1) and temporarily add paragraph (aa-2) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(aa-2) Camino Real (Boca Club) Bridge, mile 1048.2, at Boca Raton. The draw shall provide single-leaf openings from 7 a.m. to 7 p.m., Monday through Saturday, on the hour, twenty minutes past the hour and forty minutes past the hour. A full opening shall be available with a 6-hour advanced notice. At all other

times, the bridge will provide full openings on the hour, twenty minutes past the hour and forty minutes past the hour.

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Dated: December 13, 2018

Peter J. Brown
Rear Admiral, U.S. Coast Guard
Commander, Seventh Coast Guard District

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